Supreme Court, U.S.
FILED

No. 08-874

JAN 8 - 2009

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In The

Supreme Court of the United States

DAVID Y. TANG,

Petitioner,

v.

JIANGUANG WANG AND
YELLOW EMPEROR COMMUNICATIONS, INC.
d/b/a HOUSTON CHINESE PRESS,

Respondents.

On Petition For Writ Of Certiorari
To The Court Of Appeals
For The First District Of Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In light of the breathtaking explosion of point of view news media over the past twenty years, should this Court overrule *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991), and hold that the First Amendment does not protect publishers who alter reported quotations for any reason other than grammar or syntax?

2. In light of increasing national and international accessibility to traditionally local news and print media, should this Court revisit *Masson* and impose a uniform standard of "materiality" when a publisher alters a quotation for reasons other than grammar or syntax?

LIST OF PARTIES TO PROCEEDINGS

Petitioner **David Y. Tang** is the Plaintiff in the underlying district court case, the Appellee in the underlying court of appeals case, and the Petitioner in the Petition for Review filed in the Supreme Court of Texas.

Respondents **Jianguang Wang and Yellow Emperor Communications, Inc. d/b/a Houston Chinese Press** are the Defendants in the underlying district court case, the Appellants in the underlying court of appeals case, and the Respondents in the Petition for Review filed in the Supreme Court of Texas.

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OTHER AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

David Y. Tang respectfully petitions for a writ of certiorari to review the order of the Texas state First District Court of Appeals (Houston) in this case, in which the court of appeals reversed the denial of a summary judgment.

OPINION BELOW

The order of the Texas state First District Court of Appeals (Houston) that is the subject of David Y. Tang's Petition for Review is attached at Pet. App. 1-22, and is reported at 260 S.W.3d 149 (Tex. App. – Houston [1st Dist.] 2008, *pet. denied*). Notification that the Supreme Court of Texas denied David Y. Tang's Petition for Review of the First Court of Appeals order is attached at Pet. App. 25. Additionally, the Order of the 164th Judicial District Court of Harris County, Texas, which was appealed to and reversed by the First Court of Appeals, is attached at Pet. App. 23-24.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The district court order appealed by Jianguang Wang and Yellow Emperor Communications, Inc. d/b/a Houston Chinese Press was entered on December 17, 2007. The court of appeals reversed

and rendered its opinion on June 5, 2008. The Supreme Court of Texas entered its order denying David Y. Tang's Petition for Review on October 10, 2008.

In accordance with the Rules of this Court, this Petition for Writ of Certiorari is timely filed within ninety (90) days of the Supreme Court of Texas' final denial of David Y. Tang's Petition for Review.

CONSTITUTIONAL PROVISIONS INVOLVED

This Petition for Writ of Certiorari involves the First Amendment to the Constitution of the United States, which states:

> **Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to assemble, and to petition the Government for a redress of grievances.**

U.S. Const. Amend. I.

STATEMENT OF THE CASE

At issue in this case is whether the First Amendment protects individuals who report "news" for purposes other than to seek or disclose the truth. For centuries, the intent of the First Amendment – to protect the truth seeking free press – has been in

alignment with the primary purpose of the news media, to publish unvarnished and objective news. This noble purpose has been served even when such publication was a "loss" or "cost" center to the publisher.

Breathtaking societal changes over the past twenty years challenge the very assumption that the intent of the First Amendment continues to be in alignment with the primary function of today's media. With the proliferation of specialty cable television channels and the explosion of the internet as a news source, point of view and entertainment based media have all but dwarfed the traditional free press. Threatened for their very existence, the traditional news media have faced pressure to cease being the cost centers that were once tolerated by their owners.

For these reasons, Petitioner respectfully submits that this case presents important questions regarding the Court's "altered quote" jurisprudence, as most recently defined in *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991). The fundamental presumption underlying *Masson* is that the First Amendment should protect the media even in instances where they misstep, since their motivation is consistent with the goal of the First Amendment to protect the free press in its goal to seek out and disclose verifiable truth. In today's environment, however, that very presumption of alignment holds little, if any, credibility.

A. The Inflammatory Altered Quote

Like many previous Supreme Court cases, the front lines of the tension between traditional and modern standards can be found in otherwise immaterial local community disputes. Such is the case here. In a small, non-profit civic center for Chinese Americans residing in Houston, Texas, Petitioner David Y. Tang ("Tang") presided over a dispute among members of his community on April 22, 2006. Local Chinese community media entities, including the Respondent Houston Chinese Press, deemed the meeting newsworthy to its readership and sent a reporter to cover the event.

Tang did not address or make any presentations on any issue or concern during the meeting, which at times became very rancorous. However, Tang made the following closing remarks at the end of the two-hour session:

> I simply want to say one sentence, what? Last year was the anniversary of the victory of the war against the Japanese Invasion. They had a saying at such time. What was the saying? I would like to use it today. The saying is this: Facing the invasion of the Japanese Devils, they said this saying "as long as we are alive, we shall not lose one inch of ground." I want to use this sentence as conclusion to today's meeting. *So long as the new term of the board of directors are serving, so long as we get the support from warmhearted friends in the community, we, the Chinese Civic Center, for sure, for sure,*

> *who already have ten years of brilliant service, and for sure, for sure, will have ten more years of brilliant service. I thank everybody. The conference is ended. Thank you all.*

See Pet. App. 3-4 (emphasis added).

Perceiving Tang's comments as a personal attack, the Houston Chinese Press reported that Tang had referred to the media as "Japanese Devils." The newspaper quoted the first half of Tang's statement, but intentionally left off the explanatory second half (identified in italics above), and then went on to defend itself and criticize Tang for referring to the analogy.

Predictably, members of the community who did not attend the meeting were shocked and dismayed that Tang would be so callous as to draw such an analogy. Racial connotation aside, the alleged comparison between Tang's "enemies" and persons who committed unmentionable atrocities during World War II caused considerable uproar in this community, and Tang felt their wrath.

Tang subsequently filed a defamation action against the publisher of the newspaper, Jianguang Wang, and Yellow Emperor Communications, Inc. d/b/a Houston Chinese Press (collectively "Respondents"). In his lawsuit, Tang alleged that Respondents defamed him by omitting half of his quote at the conference, thereby altering it in a manner that materially changed its meaning.

B. The Underlying Decision of the First Court of Appeals (Houston).

Prior to any discovery being conducted in the case, Respondents filed a Motion for Summary Judgment in the trial court below. On December 17, 2007, the District Court granted a portion of the relief sought, but denied summary judgment on Respondents' argument that the statements were not published with actual malice. Pet. App. 23-24. Respondents subsequently filed notice of an accelerated interlocutory appeal.

On February 7, 2008, Respondents filed their appellate brief asserting that the District Court's partial denial of their Motion was error. Tang filed a responsive brief on February 27, 2008, and Respondents filed their reply on March 11, 2008. Without hearing oral argument, a three-justice panel of the state First Court of Appeals (Houston) issued its opinion on June 5, 2008, reversing and remanding the underlying case. *See* Pet. App. 1-2 & 22.

The appellate court determined that Respondents were entitled to summary judgment on the defamation claim because no genuine issue of material fact existed as to the element of actual malice. *See* Pet. App. 1-22. This holding was based on the appellate court's determination that the applicable legal standard was this Court's decision in *Time, Inc. v. Pape*, 401 U.S. 279 (1971). In *Pape*, this Court analyzed the malice element of a state law defamation claim against a media outlet under the "rational interpretation" test.

In a brief footnote, the appellate court dismissed Tang's argument that *Masson* should have been controlling. Pet. App. 17, n.5. The court held that *Masson* applied only to cases where the alteration of a quote involves the deletion of words "mid-quote" – and in this case, the allegedly missing words were stated after the quoted language.

Under the "rational interpretation" test, the appellate court found that Respondents' affidavit denying malice effectively negated the actual malice element of Tang's claim. Pet. App. 10-14. The court stated that Respondents' evidence showed Respondents' state of mind and established that Respondents had a plausible belief that the defamatory statements were true. *See id.* The court then shifted the burden to Tang to show actual malice. The appellate court found that the omitted section of the quote, Tang's affidavit, fourteen additional affidavits of witnesses, and the affidavit of Tang's expert witness were insufficient to raise a fact issue on malice. *Id.* at 13-14.

In its brief before the Texas Supreme Court, Tang argued that the Court should have applied *Masson*, instead of *Time, Inc. v. Pape*, to the facts of the case. Given the important First Amendment issues that this case raises regarding the proper applicability and scope of *Masson*, Tang respectfully requests that this Court grant certiorari and reconsider its altered quote jurisprudence in light of the current media environment.

REASONS WHY THE WRIT SHOULD ISSUE

A. This Court's Holding in *Masson v. New Yorker Magazine, Inc.*, is Outdated in Light of the Current State of the News Media.

To what extent does the "freedom of speech" include unfettered freedom to repeat the words of others? As the Ninth Circuit Court of Appeals observed in *Masson* before it reached this Court, "[t]he right to deliberately alter quotations is not . . . a concomitant of a free press." *Masson v. New Yorker Magazine, Inc.*, 895 F.2d 1535, 1548 (9th Cir. 1989).

Admittedly, this Court has long been concerned that too strict a control over the contents of a quotation would lead to self-censorship and through such censorship, free speech would be chilled. *See e.g., New York Times Co. v. Sullivan*, 376 U.S. 254, 279 (1964); *Bose Corp. v. Consumers Union*, 466 U.S. 485, 513 (1984); and *Herbert v. Lando*, 441 U.S. 153, 171-172 (1979). As recently as *Masson*, this Court again renewed its concern with imposing tight restrictions on the ability of journalists to alter quotes:

> If every alteration constituted the falsity required to prove actual malice, the practice of journalism, which the *First Amendment* standard is designed to protect, would require a radical change, one inconsistent with our precedents and *First Amendment* principles. . . . We reject the idea that any alteration beyond correction of grammar or syntax by itself proves falsity in the sense relevant

> to determining actual malice under the *First Amendment*.

Masson v. New Yorker Magazine, Inc., 501 U.S. at 514-15 (emphasis added).

In point of fact, however, the practice of journalism *has* changed dramatically since *Masson* was decided. In 2005, a study conducted by the Project for Excellence in Journalism, an institute affiliated with the Columbia University Graduate School of Journalism, observed the following:

> The traditional press model – the journalism of verification – is one in which journalists are concerned first with trying to substantiate facts. It has ceded ground for years on talk shows and cable to a new journalism of assertion, where information is offered with little time and little attempt to independently verify its veracity. . . . The blogosphere, while adding the richness of citizen voices, expands this culture of assertion exponentially, and brings to it an affirmative philosophy: ***publish anything, especially points of view***, and the reporting and verification will occur afterward in the response of fellow bloggers.

THE STATE OF THE NEWS MEDIA, *An Annual Report on American Journalism* (2005), (http://www.stateofthenewsmedia.com/2005/narrative_overview_eight.asp?cat=10&media=1) (emphasis added).

The First Amendment was designed to protect the traditional press model: verify first, publish later.

This Court's concern as articulated in *Masson* makes perfect sense under such a model, because the presumption is that the reporter would verify the accuracy of the quote before publishing it. The First Amendment was never designed to protect self-interested publishers for whom verification of fact is an afterthought.

Although the facts of this case involve traditional media (a report in a newspaper), the self-interest (i.e., point of view) of the reporter is self-evident. As soon as the Houston Chinese Press reporter perceived that Tang's statement was a personal attack, his role changed from disinterested reporter to interested, point of view driven publisher.

Certainly, the First Amendment and this Court's jurisprudence would support a conclusion that the reporter would be entitled to editorialize from an accurate quotation. However, no First Amendment protection should exist for reporters whose interest in advancing a point of view places secondary importance on the veracity of the quoted language.

Given that the discovery and dissemination of truth is the primary value of free speech, "[d]irect quotation facilitates this process by providing an accurate report of a statement of facts or an idea. By masking inaccuracy, altered quotes hinder the reader's ability to discern the truth and frustrate this first amendment value." Mary B. Koberstein, *Note: Masson v. New Yorker Magazine, Inc.: Altered States*

for Altered Quotes?, 85 Nw. U.L. Rev. 307, 332. The author of this article goes on to state:

> The Court underscored this free speech value in early cases involving speech advocating the overthrow of the government. "[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market. . . . " *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence." *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring). The Court's analysis in New York Times implied that the core meaning of the first amendment was to protect speech about government. Kalven, The New York Times Case: A Note on "The Central Meaning of the First Amendment," 191 SUP. CT. REV. 208-09 (1964). This "central meaning" is still recognized today: "Public discussion of the qualifications of a candidate for elective office presents what is probably the strongest possible case for application of the New York Times rule." *Harte-Hanks Communications, Inc. v. Connaughton*, 109 S. Ct. 2678, 2695 (1989) (citing *Ocala Star-Banner Co. v. Damron*, 401 U.S. 295, 300 (1971)). However, free speech extends to "all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." *Time, Inc. v. Hill*,

385 U.S. 374, 388 (1967) (citing *Thornhill v. Alabama*, 310 U.S. 88, 102 (1940)).

Koberstein, *Altered States for Altered Quotes?*, 85 Nw. U.L. Rev. 307, 332 & n.224. Petitioner respectfully submits that the Court should impose the simple test proposed by Ms. Koberstein: "evidence that an author has fabricated or altered a direct quote fulfills a public plaintiff's burden of proof of actual malice." *Id.* at 333. As reflected above, the imposition of a rebuttable presumption is a more appropriate standard consistent with the intent and purposes of the First Amendment.

In today's news climate, the presumption must be that both the traditional press and internet media report the news with a point of view that places secondary importance on veracity. Given such a presumption, the First Amendment should not be read to protect any alteration of a quote for reasons other than syntax or grammar.[1]

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[1] This is not a case of so-called interpretive journalism. Although Respondents argued below that he believed he was writing the truth, the fact remains that the Chinese Press reporter had a biased point of view — and the alteration of the quote was consistent with the bias.

B. Certiorari Should Be Granted so This Court Can Impose a Uniform Standard of "Materiality" for Altered Quotes.

In the alternative, Petitioner respectfully requests that the Court revisit its prior refusal to impose a "bright line" test for materiality in *Masson*. At that time, the Court stated that:

> If an author alters a speaker's words but effects no material change in meaning, including any meaning conveyed by the manner or fact of expression, the speaker suffers no injury to reputation that is compensable as a defamation. These essential principles of defamation law accommodate the special case of inaccurate quotations without the necessity for a discrete body of jurisprudence directed to this subject alone.

Masson, 501 U.S. at 515-16.

Because defamation remains rooted in state law, *Masson* essentially created a separate obligation for every state jurisdiction to independently define First Amendment "materiality" for purposes of their respective defamation causes of action. In an era where media based defamation was local in nature, such local or state based interpretations made sense. Today, however, even the smallest, most local of disputes has an ability to span the globe once the dispute is published on a newspaper's internet website. In this case, the allegation that David Tang inappropriately referred to the media as "Japanese Devils" could be heard in China itself.

Given the increasing nationalization (and internationalization) of news reporting, it is important to impose uniform standards of materiality in the altered quote jurisprudence. Lacking such uniform standards, state appellate courts have now become the bulwark of First Amendment protection (or lack thereof) for international acts of defamation. Unfortunately, the state appellate courts that have already wrestled with this issue have reached a variety of conflicting results.[2] A few examples include:

In *Murray v. Knight-Ridder, Inc.*, an Ohio court applied the materiality standard announced in *Masson* to a factual situation similar to the *Masson* case. *Murray v. Knight-Ridder, Inc.*, 2004 Ohio 821 (Ct. App. 2004). In *Murray* the Ohio Appellate Court found that a fact issue existed with regard to whether the reporter published the altered quotations with actual malice; in other words, the Ohio court found that a jury could find that the alterations materially altered the statement. *Id.* The altered statement at issue in *Murray* concerned statements made about

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[2] Indeed, this fundamental problem with the holding of *Masson* – that it creates unmanageable subjectivity in what constitutes malice in altered quotes – thrusts upon local courts the duty of subjectively determining what constitutes a sufficient alteration such that the altered statement constitutes malice as the term is used in the particular legal context. As the honorable Justices Scalia and White presciently observed in dissent, "[t]his standard is not only a less manageable one than the traditional approach, but it also assigns to the courts issues that are for the jury to decide." *Masson*, 501 U.S. at 527.

the plaintiff by a third party. *Id.* The third party stated to the reporter that the plaintiff was known in the coal industry as "Honest Bob," however the reporter in her story added that the plaintiff was referred to as Honest Bob "jokingly" by his competitors. *Id.* The Ohio court found that such an alteration presented a jury question with regard to materiality, yet the court offered no reasoning to support this conclusion. *Id.*

In *Murphy v. Boston Herald, Inc.* the Massachusetts Supreme Judicial Court applied the *Masson* materiality standard to a case involving altered quotations. *Murphy v. Boston Herald, Inc.*, 449 Mass. 42 (Mass. 2007). In *Murphy* the plaintiff, a public figure, was allowed to reach a jury, and ultimately prevailed, on the issue of whether the alteration of the quotation rose to the level of material so as to allow a finding of actual malice. *Id.* At issue in the case were statements that the Boston Herald printed attributed to the plaintiff, specifically one in which the plaintiff was quoted as saying about a teenage rape victim, "She can't go through life as a victim. She's [fourteen]. She got raped. Tell her to get over it." *Id.* at 47. At trial the reporter conceded, and several other witnesses confirmed, that the plaintiff's actual statement was "She has to get over it" or "She needs to get over it" as opposed to "Tell her to get over it." *Id.* at 55.

In affirming the jury's finding on materiality, the Massachusetts court made two noteworthy observations. *Id.* at 56-57. First, the Court stated a jury, not a

judge, should determine whether the alteration to the quote was material. *Id.* at 57. Second, the Court stated that the differences between the statement attributed to the plaintiff and the plaintiff's actual statement "cannot, as matter of law, be characterized as a minor discrepancy protected by the First Amendment." *Id.*

The latter statement by the Massachusetts court exemplifies the problem that exists with the *Masson* standard, namely that judges are deciding whether alterations are material as a matter of law without any framework for doing so to ensure consistency. The thrust of the former statement would seem to be that the issue of materiality is always one that should go to the jury, a stance that is contradictory to a multitude of cases across the jurisdictions where judges have decided the existence or lack of materiality as a matter of law, such as the case of *Chesapeake Publishing Corp. v. Williams*, 661 A.2d 1169 (Md. 1995).

In *Chesapeake*, Maryland's highest court reached a conclusion regarding materiality that seems plainly at odds with the Massachusetts and Ohio courts. The plaintiff in that case claimed that the defendant newspaper committed libel when it printed a quotation by the plaintiff that had been altered. *Id.* The subject of the quotation was an instance of alleged child abuse on the part of the plaintiff. *Id.* at 1171. The paper quoted the plaintiff as saying "I hurt her a little" when the plaintiff's actual statement was "I hurt [her] feelings." *Id.* at 1177. Furthermore, the quote appeared sandwiched between two other

statements suggesting that the plaintiff had abused his daughter. *Id.* at 1172. The Maryland Court of Appeals concluded that the misquotation did not rise to the level of material, stating that "the quote would likely have the same effect on a reader either way it was written." *Id.* at 1178.

The Ohio and Massachusetts standard of materiality would also seem at odds with the standards in Michigan, where a state court of appeals determined that an alteration of the phrase "I don't like" to "I hate" was not material as a matter of law. *Collins v. Detroit Free Press, Inc.*, 627 N.W.2d 5 (Mich. App. 2001). In *Collins*, a Michigan Congressman was quoted as saying "All white people, I don't believe, are intolerant. That's why I say I love the individuals, but I hate the race." However a tape and transcript of the quotation showed that he actually said "All white people, I don't believe, are intolerant. That's why I say, I love the individuals, but I don't like the race." *Id.* at 7.

In reversing and remanding the trial court's order denying the defendant's motion for summary judgment, the Michigan Court held as a matter of law the misquotation did not rise to the level of material to warrant a finding of falsity for the purpose of establishing actual malice. *Id.* at 9-10. In reaching this decision, the Michigan Court stated "The printed quotation, although admittedly inaccurate, does not paint a 'very different picture' from the actual quotation." *Id.* at 10, *quoting Masson*, 501 U.S. at 523.

Twenty years ago, such differences may not have been significant. Today, however, a quotation of an Ohio congressman's alleged statement in the Detroit Free Press would very quickly reach citizens in Ohio, Washington D.C., and around the nation through the newspaper's internationally accessible website, www.freep.com. It is axiomatic to state that the First Amendment should not be applied differently (for exactly the same offense) by state and federal courts in Michigan versus Ohio versus Massachusetts or Maryland or Texas, but that is precisely the world that *Masson* has created. Petitioner respectfully requests that the Court grant certiorari to resolve the disputes among the various state courts regarding the appropriate standard of materiality for purposes of its altered quote jurisprudence.

CONCLUSION

Petitioner respectfully contends that this Court needs to overrule its holding in *Masson v. New Yorker Magazine*, 501 U.S. 496 (1991), which hindsight has proven to be an inadequate interpretation of the First Amendment's protection of media publications of quotations altered for reasons other than syntax or grammar. In an era where the media has lost its focus on verification of fact in favor of point of view and entertainment presentation of speech, the First Amendment should protect speakers only to the extent that they accurately quote a previous speaker, and no further.

At a minimum, this Court needs to revisit *Masson* in order to impose a uniform standard of "materiality" for purposes of First Amendment protection of altered quotes. A review of cases from across the nation addressing the same or related issues raised in this case reveals a conflict in how and when this Court's decision in *Masson* is applied. Given the increasing globalization of the free press, local misquotes have far greater impact and consequence than they did twenty years ago. The net result is that this Court now permits the First Amendment to be applied differently depending on state court jurisdiction, for the exact same alleged defamatory acts.

For the foregoing reasons, Petitioner respectfully requests that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

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Opinion issued June 5, 2008

[SEAL]

In The
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NO. 01-08-00009-CV

JIANGUANG WANG AND YELLOW EMPEROR COMMUNICATIONS, INC. D/B/A HOUSTON CHINESE PRESS, Appellants

v.

DAVID TANG, Appellee

On Appeal from the 164th District Court
Harris County, Texas
Trial Court Cause No. 2007-24344

OPINION

In this interlocutory, accelerated appeal, we determine whether the trial court properly denied the motion for summary judgment filed by the *Houston Chinese Press*[1] against David Tang's libel claims.

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[1] We refer to media defendants, Jianguang Wang and Yellow Emperor Communications, Inc. d/b/a Houston Chinese

(Continued on following page)

Because Tang, who is a limited purpose public figure, did not present sufficient summary judgment evidence to raise an issue of material fact on the element of actual malice to support his libel claim, we conclude that the *Houston Chinese Press* was entitled to summary judgment.

We reverse and render.

Background

The Chinese Civic Center ("the CCC") is a nonprofit organization promoting and offering social, cultural, and educational activities for the Houston Chinese community. The CCC serves an important and integral role in that community.

In 2005, the CCC assisted in bringing the Beijing People's Art Theater to Houston to perform the play *Teahouse*. After the Houston performance, concerns arose in the Chinese community regarding the CCC's financial accounting relating to the performance. A concern also arose in the community regarding whether the CCC had sufficient funds to continue operating.

On April 22, 2006, the CCC held a press conference to introduce its new officers and board members and to discuss CCC accounting and financial issues, including those relating to the *Teahouse* performance.

Press, collectively as "the Houston Chinese Press," unless otherwise indicated.

At the beginning of the press conference, David Tang was introduced as new vice-chair of the CCC. Members of the Chinese community and the Chinese-language media, including the *Houston Chinese Press*'s editor-in-chief, Jianguang Wang, attended the meeting. During the press conference, the board members responded to questions posed by the audience regarding the CCC's finances and operations. Some in the audience were critical of the board's management and, at times, the atmosphere of the press conference was tense.

Tang acted as the master of ceremonies at the press conference, but did not answer any of the audience's questions. At the end of the press conference, Tang made the following closing remarks:

> Lastly, I only want to say one word. What? Last year we had the celebration of the 60th anniversary of the victory of the Anti-Japanese War. They had a saying at that time. What is that saying? I would like to use it today. The saying is this: Facing the invasion of the Japanese Devils, they said this saying "as long as we are alive, we shall not lose one inch of ground." I want to use this saying as a conclusion to today's meeting. **So long as the new board of directors are serving, so long as we get the support from our warmhearted friends in the community, we, the Chinese Civic Center, for sure, for sure, who already have ten years of brilliant service and for sure, will have ten more years of**

> **brilliant service. I thank everybody. The conference is ended. Thank you all.**

(Emphasis added.)

On April 30, 2006, the *Houston Chinese Press* published an article ("the article") entitled, "Guizi [translated: "Japanese Invaders"] are Coming: Board of Civic Center Have Vowed to Resist Japanese." The article reported some of the questions posed by the audience, criticized the adequacy of the board's responses, and highlighted accounting discrepancies relating to the CCC's finances. The article also quoted the portion of Tang's of closing remarks referencing the invasion by the "Japanese Devils," but did not include the remainder of Tang's remarks, which are bolded above. In reference to Tang's closing remarks, the article stated as follows, in part, and as translated from Chinese to English:[2]

> "Japanese Invaders" certainly refers to the enemies in the war in which Japanese invaded China, the Japanese Guizi who looted, massacred, raped and committed all manners of crimes on Chinese people for as long as eight years. David Tang used the "invasion of Japanese invaders" as an analogy, then he had "fight to the death in defense of one's front," then he had teamwork of the board of [the] Chinese Civic Center team up,

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[2] We acknowledge the grammatical and syntactical errors in this translation. We have chosen to set forth the translation with only a few minor corrections to aid the reader.

etc. If we deduct [sic] in this way, David is having the community as the battlefield, moreover, the battlefield of fighting against Japanese, and having the Chinese Civic Center as the front, moreover, the front to fight against Japanese invaders. People who attended the news press meeting on that day feel puzzled in and after the meeting. Are the "Japanese Invaders, referred [to] by David Tang, the news media, or the presenting persons who support, care for and make donations to [the] Chinese Civic Center? If in the eyes of some directors of [the] Chinese Civic Center, the Chinese in the community actually become the "Japanese Invaders," who cannot live under the same sky due to hatred, all persons in the Houston Chinese Community other than [the] Chinese Civic Center, the front, will be Japanese and "Chinese Civic Center" will become an anti-Japanese organization accordingly and matter-of-factly. Meanwhile, the fund to fight against Japanese needs to be obtained from Japanese Invaders.

People feel compelled to ask again, that while [the] Chinese Civic Center reiterate since its inception that it is to be owned by all, now all were put in categories of "Japanese Invaders" for just asking a few questions eyed by the community. . . .

. . . .

CCC is the home of the overseas Chinese in Houston. To love one's home is the heritage

> of many Chinese. We hope there is a good management of CCC. Only those [who] love their home will denounce the unlawful acts of the management. Even though we are considered as "Japanese Invaders," we still love our home.
>
> . . . .
>
> Don't regard those who raised questions to CCC as "trouble makers." Do not regard those people that love CCC as Japanese Invaders while consider himself as the heroes on Lang Yanshan. Do not put the interest of someone in the CCC board above the whole interest of CCC. Otherwise, if the "Japanese Invaders" are coming, can you hold your own front? Please remember, to hold on to the front will not be you guys, it will be the whole community who were smeared to be "Japanese Invaders" that love the Chinese People.

Eleven months later, Tang filed suit against Wang and the *Houston Chinese Press*, asserting a libel claim based on the April 30 article. Specifically, Tang alleged that, by failing to publish the entirety of his closing statement from the press conference, the *Houston Chinese Press* intentionally misrepresented and "distorted" his remarks to mean that Tang was referring to the Chinese community and the media as "Japanese Invaders." Tang claimed that, when heard in its entirety, his closing remark could only be interpreted to mean: "That working together with the members of the community, the Chinese Civic Center

would move forward into the next decade of dedicated service to the members of the Houston Overseas Chinese Community." Tang vehemently denied that, by his closing remarks, he was referring to the Houston Chinese community as "Japanese Invaders" or "guizi."

The *Houston Chinese Press* moved for summary judgment on Tang's libel claim. Among the grounds for summary judgment was the *Houston Chinese Press*'s assertion that it had not published the alleged defamatory statements with actual malice.

Tang amended his petition to include libel claims based on other statements in the April 30 article besides those relating to the Japanese invasion reference. The *Houston Chinese Press* supplemented its motion for summary judgment to assert that the new allegations of libel were time-barred. Following a hearing, the trial court granted the *Houston Chinese Press*'s motion for summary judgment regarding the additional libel claims added by Wang in his amended petition. The trial court denied the *Houston Chinese Press*'s motion for summary judgment as to Wang's libel claims arising from those statements in the article asserting that Wang had called those in the Houston Chinese community, who questioned the board "Japanese Invaders" or "guizi."

The *Houston Chinese Press* filed this interlocutory appeal challenging the trial court's denial of its motion summary judgment relief. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(6) (Vernon Supp. 2007).

Traditional Summary Judgment Standard and Elements of Claim

We review a summary judgment ruling pursuant to a de novo standard. *Provident Life & Accident Ins. Co. v. Knott,* 128 S.W.3d 211, 215 (Tex. 2003). When conducting our review, we take the nonmovant's competent evidence as true, indulge every reasonable inference in favor of the nonmovant, and resolve all doubts in favor of the nonmovant. *Diversicare Gen. Partner, Inc. v. Rubio,* 185 S.W.3d 842, 846 (Tex. 2005). A defendant may prevail by traditional summary judgment if it defeats at least one essential element of the plaintiff's claim as a matter of law. *See Science Spectrum, Inc. v. Martinez,* 941 S.W.2d 910, 911 (Tex. 1997).

To establish his defamation claim, Tang, a limited purpose public figure,[3] must show that the *Houston Chinese Press* published the allegedly defamatory statements with actual malice. *See Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 342, 94 S. Ct. 2997, 3008 (1974); *WFAA-TV, Inc. v. McLemore,* 978 S.W.2d 568, 571 (Tex. 1998). The *Houston Chinese Press* may prevail on its motion for summary judgment by offering evidence negating the actual malice element as a matter of law. *See Hearst Corp. v. Skeen,* 159 S.W.3d 633, 637 (Tex. 2005); *Huckabee v. Time Warner Entm't Co. L.P.,* 19 S.W.3d 413, 420 (Tex. 2000). Once

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[3] Tang does not dispute on appeal that he is a limited purpose public figure.

the *Houston Chinese Press* meets this burden, then Tang must present evidence raising a genuine issue of material fact regarding actual malice to avoid summary judgment. *Huckabee,* 19 S.W.3d at 420.

Constitutional Actual Malice

A. Applicable Principles

In defamation suits involving public figures, the actual malice standard serves to protect innocent but erroneous speech on public issues, while deterring "calculated falsehoods." *See Turner v. KTRK Television, Inc.,* 38 S.W.3d 103, 120 (Tex. 2000). A showing of "actual malice" in a defamation suit requires proof that the defendant made a statement with knowledge that it was false or with reckless disregard of whether it was true or false. *New Times, Inc. v. Isaacks,* 146 S.W.3d 144, 162 (Tex. 2004); *Huckabee,* 19 S.W.3d at 420. Reckless disregard is a subjective standard, focusing on the defendant's state of mind. *Isaacks,* 146 S.W.3d at 162; *Bentley v. Bunton,* 94 S.W.3d 561, 591 (Tex. 2002). Specifically, the plaintiff must establish that the defendant in fact entertained serious doubts as to the truth of his publication, or had a high degree of awareness of the probable falsity of the published information. *Isaacks,* 146 S.W.3d at 162 (citing *Bentley,* 94 S.W.3d at 591) (internal quotations omitted). A public figure may rely on circumstantial evidence to prove a defendant's state of mind. *Bentley,* 94 S.W.3d at 591.

B. Wang's Evidence Negating Actual Malice

To negate the actual malice element, the *Houston Chinese Press* offered the affidavit of its editor-in-chief, defendant, Jianguang Wang. Affidavits from interested witnesses will negate actual malice as a matter of law only if they are "clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted."[4] TEX. R. CIV. P. 166a(c); *see Huckabee,* 19 S.W.3d at 424. In a defamation suit, a defendant is permitted to testify by affidavit about his subjective state of mind and his belief about the challenged statement's truth or falsity. *See Casso v. Brand,* 776 S.W.2d 551, 559 (Tex. 1989). But, to negate actual malice, a defendant's affidavit must establish his belief in the challenged statement's truth and provide a plausible basis for his belief. *Huckabee,* 19 S.W.3d at 424. Wang's affidavit meets these requirements.

First, Wang's affidavit establishes his belief in the truth of the allegedly defamatory statements. Wang testified that, at the time of publication, he "knew of no statement" in the article that was "false" and "had no doubts as to the truth of any statements"

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[4] The phrase "could have been readily controverted" does not mean that the summary judgment proof could have been easily and conveniently rebutted, rather, it indicates that the testimony could have been effectively countered by opposing evidence. *Trico Technologies Corp. v. Montiel,* 949 S.W.2d 308, 310 (Tex. 1997).

in the article. More specifically, Wang testified, in relevant part,

> I was surprised and shocked to hear Mr. Tang refer to the Japanese invasion of China at the end of this confrontational meeting. I understood Mr. Tang's comment to be directed towards those members of the audience and media who were raising questions about the *Teahouse* performance and the CCC's explanation of its finances and accounting. In my opinion, the only thing that Mr. Tang could have been referring to in his comment about the Japanese invasion were the people raising questions about the CCC, nearly all of whom were members of the Chinese community.
>
> . . . .
>
> I understood Mr. Tang's words in the context of the contentious meeting that was coming to a close. I understood Mr. Tang's words regarding the "Japanese invaders" and the "defense of our position" to be referring to the people who were questioning the CCC's actions and his own defense of the CCC's positions. I understood Mr. Tang to be comparing the people who were questioning the CCC to China's enemies. Perhaps Mr. Tang's statements were exaggeration or hyperbole, but I had no doubt that his statement was referring to the persons who had questioned the CCC's actions.

The affidavit also established that Wang had a plausible basis for his belief that the allegedly defamatory statements were true. Wang stated that he attended the CCC press conference and heard Tang make the statement referencing the Japanese invasion of China. Wang explained the historical significance to the Chinese community of Tang's reference to the Japanese invasion. Wang described his underlying thought process to show why he believed that the *Houston Chinese Press*'s statements are truthful. Specifically, he explained that Tang's comments came at the end of a "confrontational meeting" between the audience, "nearly all of whom were members of the Chinese community," and the CCC board, of whom Tang was a member. In this context, it appeared to Wang that the audience members, including the media present, were the Japanese enemy to whom Tang referred in his closing statement.

Wang also testified that he heard other members of the audience express shock at Tang's comments, including one woman who, upon hearing the reference to the Japanese invasion exclaimed, "My God!" Wang averred in his affidavit that this reaction indicated to him that others in the audience also interpreted Tang's reference to the Japanese invasion as he did.

Wang buttressed his testimony with the affidavits of five other audience members, who also heard Tang's remarks. These five individuals interpreted Tang's comments in the manner reported by the *Houston Chinese Press*. Specifically, four of the

affiants understood Tang to be equating the audience's questions regarding the CCC's operations and finances to the Japanese invasion of China, to be comparing the audience, who were members of the Chinese-language media and the Chinese community, to the "Japanese invaders," and to be likening the CCC board to the defending Chinese army. The fifth affiant testified that he believed that Tang had "confused the audience with the Japanese invaders."

Wang further supported his testimony by offering two articles from other Chinese-language newspapers, which discussed the press conference. One of the articles, which appeared in the *Chinese Times*, described the tension that arose during the press conference between those asking questions and the CCC board. Referring to Tang's remark that, during the Japanese invasion, Chinese soldiers said that "we'll fight to the death in defense of our position," the article noted that Tang "said this probably to express his determination to do a job well. But some media were not happy with what he said. One reporter said: 'We have all turned into Japanese devils and puppet troops.'" The other article, which appeared in the Chinese-language newspaper the *World Journal*, describe the contentious nature of the press conference.

Based on the summary judgment evidence offered, we conclude that Wang negated the actual malice element. Wang's affidavit is "clear, positive, and direct, otherwise credible and free from contradictions and inconsistencies, and could have been

readily controverted." *See* TEX. R. CIV. P. 166a(c). In his affidavit, Wang does not simply deny actual malice; rather, he provides a detailed explanation of his state of mind and describes the basis for his belief. Accordingly, the burden shifts to Tang to raise an issue of material fact regarding actual malice. *See Freedom Newspapers of Tex. v. Cantu*, 168 S.W.3d 847, 853 (Tex. 2005) (concluding that affidavits from publisher and copy desk editor averring that neither had knowledge of inaccuracies or any reason to doubt accuracy of articles was evidence that newspaper acted without malice and shifted burden to plaintiff to produce contrary evidence to avoid summary judgment); *Hearst*, 159 S.W.3d at 637 (reasoning that author's affidavit stating that he believed article was true and accurate based on his extensive research negated actual malice and burden shifted to plaintiffs to raise fact issue); *Isaacks*, 146 S.W.3d at 164-65 (reversing denial of media defendants' motion for summary judgment on ground that affidavits of editor-in-chief, managing editor, and author negated actual malice as matter of law).

C. Tang's Evidence Regarding Actual Malice

1. "Omission" of Part of Tang's Statement

As mentioned above and as reflected in the summary judgment evidence, Tang made the following statement at the close of the press conference:

> Lastly, I only want to say one word. What? Last year we had the celebration of the 60th

> anniversary of the victory of the Anti-Japanese War. They had a saying at that time. What is that saying? I would like to use it today. The saying is this: Facing the invasion of the Japanese Devils, they said this saying "as long as we are alive, we shall not lose one inch of ground." I want to use this saying as a conclusion to today's meeting. **So long as the new board of directors are serving, so long as we get the support from our warmhearted friends in the community, we, the Chinese Civic Center, for sure, for sure, who already have ten years of brilliant service and for sure, will have ten more years of brilliant service. I thank everybody. The conference is ended. Thank you all.**

The evidence shows that the *Houston Chinese Press* published only part of Tang's statement; it did not publish the bolded portions of Tang's remarks.

In his affidavit, Tang explained his statement as follows:

> The slogan is a commonly used slogan, even today. The meaning of the slogan is that, as long as we work together and continue to persevere, we can overcome any obstacle. As the last sentences make abundantly clear, the reasons I said this was to conclude on a positive note: that as long as the Chinese Civic Center and its warmhearted friends in the community work together, the Center will continue to provide service to the Chinese Community in the future, and will even

> provide better service. When I said my statements I heard round of applause. I did not hear any booing.

For summary judgment purposes, we assume the truth of Tang's assertion that he intended his statement to be a call for the Chinese community to unify to overcome the financial difficulties faced by the CCC. *See Cantu,* 168 S.W.3d at 855. Nonetheless, to avoid summary judgment, Tang is still required to offer evidence establishing that the *Houston Chinese Press* acted with actual malice in its publication. *See id.*

In this regard, Tang contends that the "alteration" of his statement by the *Houston Chinese Press* is itself evidence raising an issue of material fact regarding actual malice. Tang asserts that, by omitting the above-bolded language, the *Houston Chinese Press* "altered" and "distorted" Tang's statement and changed its meaning "entirely." Tang contends that the *Houston Chinese Press* knowingly and intentionally omitted the last part of his remarks to create a false impression. Tang points out that the *Houston Chinese Press* used the "altered" version to support its claim that Tang called the Chinese community "guiza" or "Japanese Devils."

Tang reasons that the act of knowingly publishing only part of the quote is itself evidence that the *Houston Chinese Press* acted with actual malice. More specifically, Tang avers that actual malice is shown when "a defendant knowingly publishes an altered or

incomplete quote and that altered or incomplete quote is materially different from the actual quote."[5] To this end, Tang offers summary judgment evidence to show that Wang was aware of the entire statement, but chose to publish only part of it. Tang cites evidence showing that Wang personally heard Tang's remarks at the press conference and also viewed a videotape of the statement before the article was published.

In his summary judgment response, Tang asserts,

> The fact that Defendant had a video of the conference and had actual knowledge of what Mr. Tang said but nonetheless omitted half of the statement to change the meaning is conclusive evidence that Defendants published the statement with knowledge it was substantially altered or with reckless disregard as to whether it was substantially altered.

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[5] In support of this proposition, Tang cites the United States Supreme Court's opinion in *Masson v. New Yorker Magazine*, 501 U.S. 496, 111 S. Ct. 2419 (1991). Despite Tang's reliance, *Masson* is factually inapposite to this case. In *Masson*, the subject quote had a portion of the speaker's words deleted mid-quote with no indication of the deletion. *See id.*, 111 S. Ct. at 2437. Such deletion mislead the reader to believe that the last sentence of the quoted passage directly followed the sentence that preceded it, which it did not. *See id.*, 111 S. Ct. at 2437. Such is not the circumstance here.

Contrary to Tang's position, this alone is not sufficient to raise a fact issue regarding actual malice. Rather, a public figure seeking to recover for an omission must show that the publisher selected the material with actual malice. *Huckabee,* 19 S.W.3d at 426. For an omission to be evidence of actual malice, the plaintiff must prove that the publisher knew or strongly suspected that the omission could create a substantially false impression. *Turner,* 38 S.W.3d at 121. The omission may be so glaring and may result in such a gross distortion that, by itself, it constitutes some evidence of actual malice. *Huckabee,* 19 S.W.3d at 426. "In such a case, the omission so changes the character of the story that one could infer that the defendant knew, or at least suspected, that the omission would convey a false impression." *Id.*

Here, the overall purpose of the *Houston Chinese Press* article was to report what transpired at the press conference. According to the article, the CCC board inadequately answered inquiries regarding the CCC's finances, leaving many questions unanswered. The article focused on the contentiousness of the press conference and the perceived hostility toward those who questioned the board. It was in this context that the *Houston Chinese Press* quoted Tang regarding his analogy to the Japanese invasion of China.

Although the *Houston Chinese Press* did not publish the entirety of Tang's closing remarks, Tang has not offered summary judgment evidence to show that the *Houston Chinese Press* knew or strongly suspected that failing to include the last portion of his

statement could create a substantially false impression. As discussed, Wang testified in his affidavit that he believed, in the context of the contentious press conference, that Tang was referring to those in the Chinese community questioning the CCC board as "Japanese enemies." This, to Wang, was the "noteworthy" or newsworthy comment made by Tang. It follows that this was the portion of Tang's remarks that the *Houston Chinese Press* choose to publish. We do not agree with Tang's assertion that the omitted portion of his statement "specifically rebut[s] the defamatory charge that [the] article imputed to [Tang]." Rather, this is but one interpretation depending on the listener's point of view.

In the absence of evidence that it omitted Tang's remarks to portray his statements falsely, the First Amendment protects the *Houston Chinese Press*'s editorial choice regarding what material it included in the article. *See id.* Tang offered no evidence to controvert Wang's testimony regarding his interpretation of Tang's remarks. Nor has Tang offered sufficient evidence to show that Wang's interpretation was not a plausible or reasonable one in light of the tenor of the press conference and the provocative nature of Tang's analogy. *See Cantu*, 168 S.W.3d at 855 (holding that understandable misinterpretation of ambiguous facts does not show actual malice).

Given Wang's understanding of Tang's comments, the fact that the *Houston Chinese Press* did not publish all of Tang's closing remarks does not itself raise a material fact issue regarding actual malice.

See Huckabee, 19 S.W.3d at 425 (concluding that evidence showing publication is produced from particular point of view, even if hard-hitting or sensationalistic, is not evidence of actual malice). At most, the *Houston Chinese Press*'s decision to include only the first part of Tang's statement was an error in judgment arising from Wang's interpretation of Tang's comments. Errors in judgment are not evidence of actual malice. *See Time Inc. v. Pape,* 401 U.S. 279, 290, 91 S. Ct. 633, 639 (1971) (rejecting plaintiff's claim that defendant's interpretation that omitted word "alleged" was evidence of actual malice, although such interpretation was a misconception); *Huckabee,* 19 S.W.3d at 426 (concluding that, even though omitted facts may have allowed reasonable viewer to reach opposite conclusion from what was reported, media defendant's failure to capture accurately all details suggests error in judgment, which is no evidence of actual malice).

We conclude that Tang has not shown that the *Houston Chinese Press*'s decision not to publish his entire closing remarks raises an issue of material fact regarding actual malice.

2. Expert Witness Testimony

To raise an issue of material fact regarding actual malice, Tang submitted the "expert affidavit" of John Robbins, "an editor for the largest Chinese press in Houston," who offered his opinion regarding the article. Before forming his opinion, Robbins

watched a video of the press conference and read the subject *Houston Chinese Press* article. In his affidavit, Robbins opined that "[t]e publish and refer to only half of the actual quote as the entire quote, and then editorialize from that 'half quote' is not responsible journalism. . . ." Robbins averred that "the only reason for publishing only a select portion of Mr. Tang's statement appears to have been to intentionally misrepresent what Mr. Tang actually said, and then to proceed with the publishing of an article based on that misrepresentation."

Contrary to Tang's assertion, Robbins's testimony is not probative of actual malice. "An expert's testimony 'is not probative of actual malice because [his] opinion relates to a reckless disregard for a standard of objectivity, not for the truth.'" *Gonzales v. Hearst Corp.*, 930 S.W.2d 275, 283 (Tex. App. – Houston [14th Dist.] 1996, no writ) (quoting *Harris v. Quadracci*, 856 F. Supp. 513, 519 (E.D. Wis. 1994)). Moreover, actual malice inquires only into the mental state of the defendant, and Robbins claimed no expertise in that field. *See Cantu*, 168 S.W.3d at 858-59. Robbins's opinion was not based on evidence that gave particular insight into the defendants' mental state; rather, his opinion was based on his reading of the article and on his viewing of the videotape of the press conference. *See id.* at 859. Assuming the "expert affidavit" was competent evidence, Robbins's opinion does not raise a genuine issue of material fact with regard to whether the *Houston Chinese Press* published the alleged defamatory statements with

knowledge that they were false or with reckless disregard of whether they were true or false. *See id.*

Conclusion

The summary judgment record establishes, as a matter of law, that the *Houston Chinese Press* did not publish the alleged defamatory remarks with actual malice. Tang has not carried his summary judgment burden to show that a genuine issue of material fact exists with regard to the actual malice element. We hold that the *Houston Chinese Press* is entitled to summary judgment.

We sustain the *Houston Chinese Press*'s first issue,[6] reverse the trial court's order to the extent that it denies the *Houston Chinese Press*'s motion for summary judgment, and render judgment that Tang take nothing.

Laura Carter Higley
Justice

Panel consists of Chief Justice Radack and Justices Keyes and Higley.

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[6] Because the first issue is dispositive of the appeal, we do not address the *Houston Chinese Press*'s two remaining issues.

No. 2007-24344

DAVID Y. TANG, Plaintiff, v. JIANGUANG WANG and YELLOW EMPEROR COMMUNICATIONS, INC., d/b/a HOUSTON CHINESE PRESS, Defendants.	§ IN THE DISTRICT § COURT OF § § § HARRIS COUNTY, § TEXAS § § § 164th JUDICIAL § DISTRICT § §

ORDER

(Filed Oct. 6, 2007)

On this day came to be heard Defendants' Motion for Summary Judgment and Court, after considering the motion, the pleadings on file with the Court, and the argument of the parties and/or their counsel, finds that the Motion has merit and should be GRANTED. [in part /s/ MHJ].

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motion for Summary Judgment is GRANTED [in part /s/ MHJ] and all [libel /s/ MHJ] claims asserted by Plaintiff against Defendants Jianguang Wang and Yellow Emperor Communications, Inc., d/b/a Houston Chinese Press [NOT part of Plaintiff's Original Petition /s/ MHJ] are hereby dismissed ~~and a take-nothing judgment in favor of Defendants and against Plaintiff is hereby rendered, with costs taxed to the Plaintiff. This Order~~

~~disposes of all claims by all parties and is a final order.~~ [as time-barred. The rest of Defendants' Motion is denied. /s/ MHJ]

Dated: December 17, 2007

/s/ Martha Hill Jamison
Hon. Martha Hill Jamison
HARRIS COUNTY
DISTRICT JUDGE

[SEAL]

I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date

Witness my official hand and seal of office this December 26, 2007

Certified Document Number: 34796439 Total Pages: 1

/s/ Theresa Chang
THERESA CHANG,
DISTRICT CLERK
HARRIS COUNTY, TEXAS

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RE: Case No. 08-0579 DATE: 10/10/2008
COA #: 01-08-00009-CV TO #: 2007-24344

STYLE: DAVID Y. TANG
v. JIANGUANG WANG AND YELLOW EMPEROR COMMUNICATION, INC D/B/A HOUSTON CHINESE PRESS

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

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